

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6294 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ELECTRO FABRICATORS

Versus

DENIYAL ZAVIERS CHRISTIAN

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Appearance:

MR BV LAKHIA for Petitioner

MR GM JOSHI for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Mr. Lakhia, the learned advocate is present for the petitioner. Mr.Joshi, the learned advocate is present for the respondent. The facts of the present case, in short, are that the respondent herein was working with the petitioner and his services were terminated by the petitioner. The respondent was working as permanent worker and his services were terminated with

effect from 6th August, 1976 and, therefore, the respondent has challenged the said action of termination of his services by filing reference before the labour court being reference no. 392 of 1977. The labour court has passed the impugned award of reinstatement of the respondent in absence of the petitioner with continuity of service and also with 40 percent of the back wages for the intervening period. Thereafter, the petitioner had moved an application before the labour court for setting aside the ex parte award which too was rejected by the labour court. The petitioner has, thereafter, not challenged the ex parte order of the labour court and has also not challenged the order of the labour court rejecting the petitioner's application for setting aside the ex parte award of reinstatement of the respondent workman. Thus, the award which was passed by the labour court has attained finality. The respondent was not paid the back wages in terms of the award on the ground that the petitioner company was closed on 31.3.78 and, therefore, the respondent moved the labour court by filing recovery application no. 1581 of 1979. Before the labour court, the respondent workman was examined vide Exh. 16 and the respondent has also produced documentary evidence vide Exh. 12 to 22 and the petitioner has produced documentary evidence vide Exh. 27. The labour court, Ahmedabad, after considering the evidence brought on record in recovery application, came to the conclusion that the petitioner company has been shown to have been closed just to avoid the payment of back wages as directed by the labour court and the petitioner company has created false documents to prove the factum of closure of the petitioner company. The labour court has given elaborate reasons and discussed the evidence on record and ultimately, came to the conclusion that the respondent workman is entitled to recover an amount of Rs. 10032.00 from the petitioner company. Accordingly, the labour court has granted the recovery application directing the petitioner to pay to the respondent an amount of Rs. 10032.00 within thirty days with costs of Rs. 100/-. Said order of the labour court passed in recovery application has been challenged by the petitioner before this court by filing this petition.

This Court, while issuing rule on the matter, has granted interim stay against the order of the labour court on a condition that the petitioner company should deposit an amount of Rs. 5,000/- within four weeks of the order with a liberty to the respondent workman to withdraw the said amount.

At the time of hearing of this petition, it has been pointed out by Mr. Lakhia that as per the order of this court passed at the time of admission of this petition, the petitioner has deposited the amount of Rs.5000/- before the labour court but he was not sure as to whether the said amount has been withdrawn by the respondent or not.

I have considered the submissions and the contentions raised by Mr.Lakhia. As per the submission of Mr. Lakhia, the labour court has erred in directing the petitioner company to pay to the respondent an amount of Rs. 10,032/-. It is not in dispute that the award of reinstatement and back wages has not been challenged by the petitioner and the same has become final. Not only that but the order passed by the labour court in an application moved by the petitioner for setting aside the ex parte award has also not been challenged by the petitioner co. Therefore, the contention that in view of the closure of the petitioner Co., the labour court cannot pass order of recovery against the petitioner company cannot be entertained in light of the fact that the award passed by the labour court has become final and therefore, the order of the labour court passed in recovery application is not suffering from any infirmity apparent on the face of the record. Therefore, this Court, while exercising the powers under Article 226 and/or 227 of the Constitution of India, cannot act as an appellate court in view of the decision of the Hon'ble apex Court reported in 1998(1) GLR 17. As per my view, the labour court is perfectly justified in passing the order and granting recovery application. Accordingly, this petition is dismissed. Rule is discharged. There shall be no order as to costs. Ad-interim relief granted earlier shall stand vacated.

At the time of issuing rule, this court has directed the petitioner to deposit an amount of Rs. 5000/- before the labour court and accordingly, said amount has been deposited by the petitioner before the labour court as stated by Mr. Lakhia, learned advocate for the petitioner co. Therefore, since it is not certain as to whether the said amount has been withdrawn by the workman or not, the labour court is directed to pay the said amount to the respondent workman by account payee cheque, if the same is not withdrawn so far. The petitioner is also directed to deposit the remaining amount in terms of the order of the labour court within two months from the date of receiving certified copy of this order, and after the said amount is deposited by the petitioner Corporation, same shall be paid to the

respondent workman by the Labour Court by A/c. Payee  
Cheque.

1.10.1999. (H.K.Rathod,J.)

Vyas